# MESSAGE

OF THE

# PRESIDENT OF THE UNITED STATES,

TRANSMITTING TO CONGRESS

# THE CONSTITUTION OF KANSAS.

FEBRUARY 2, 1858.

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# MESSAGE.

*To the Senate and House of Representatives of the United States:*

I have received from J. Calhoun, esq., president of the late constitutional convention of Kansas, a copy, duly certified by himself, of the constitution framed by that body, with the expression of a hope that I would submit the same to the consideration of Congress, "with the view of the admission of Kansas into the Union as an independent State." In compliance with this request, I herewith transmit to Congress, for their action, the constitution of Kansas, with the ordinance respecting the public lands, as well as the letter of Mr. Calhoun, dated at Lecompton on the 14th ultimo, by which they were accompanied. Having received but a single copy of the constitution and ordinance, I send this to the Senate.

A great delusion seems to pervade the public mind in relation to the condition of parties in Kansas. This arises from the difficulty of inducing the American people to realize the fact that any portion of them should be in a state of rebellion against the government under which they live. When we speak of the affairs of Kansas, we are apt to refer merely to the existence of two violent political parties in that Territory, divided on the question of slavery, just as we speak of such parties in the States. This presents no adequate idea of the true state of the case. The dividing line there is not between two political parties, both acknowledging the lawful existence of the government, but between those who are loyal to this government and those who have endeavored to destroy its existence by force and by usurpation—between those who sustain and those who have done all in their power to overthrow the territorial government established by Congress. This government they would long since have subverted had it not been protected from their assaults by the troops of the United States. Such has been the condition of affairs since my inauguration. Ever since that period a large portion of the people of Kansas have been in a state of rebellion against the government, with a military leader at their head of a most turbulent and dangerous character. They have never acknowledged, but have constantly renounced and defied the government to which they owe allegiance, and have been all the time in a state of re-

sistance against its authority. They have all the time been endeavoring to subvert it and to establish a revolutionary government, under the so-called Topeka constitution, in its stead. Even at this very moment the Topeka legislature are in session. Whoever has read the correspondence of Governor Walker with the State Department, recently communicated to the Senate, will be convinced that this picture is not overdrawn. He always protested against the withdrawal of any portion of the military force of the United States from the Territory, deeming its presence absolutely necessary for the preservation of the regular government and the execution of the laws. In his very first despatch to the Secretary of State, dated June 2, 1857, he says: "The most alarming movement, however, proceeds from the assembling on the 9th June of the so-called Topeka legislature, with a view to the enactment of an entire code of laws. Of course it will be my endeavor to prevent such a result, as it would lead to inevitable and disastrous collision, and, in fact, renew the civil war in Kansas." This was with difficulty prevented by the efforts of Governor Walker; but soon thereafter, on the 14th of July, we find him requesting General Harney to furnish him a regiment of dragoons to proceed to the city of Lawrence—and this for the reason that he had received authentic intelligence, verified by his own actual observation, that a dangerous rebellion had occurred, "involving an open defiance of the laws and the establishment of an insurgent government in that city."

In the governor's despatch of July 15, he informs the Secretary of State "that this movement at Lawrence was the beginning of a plan, originating in that city, to organize insurrection throughout the Territory; and especially in all towns, cities, or counties where the republican party have a majority. Lawrence is the hot bed of all the abolition movements in this Territory. It is the town established by the abolition societies of the east, and whilst there are respectable people there, it is filled by a considerable number of mercenaries who are paid by abolition societies to perpetuate and diffuse agitation throughout Kansas, and prevent a peaceful settlement of this question. Having failed in inducing their own so-called Topeka State legislature to organize this insurrection, Lawrence has commenced it herself, and, if not arrested, the rebellion will extend throughout the Territory."

And again: "In order to send this communication immediately by mail, I must close by assuring you that the spirit of rebellion pervades the great mass of the republican party of this Territory, instigated, as I entertain no doubt they are, by eastern societies, having in view results most disastrous to the government and to the Union; and that

the continued presence of General Harney here is indispensable, as originally stipulated by me, with a large body of dragoons and several batteries."

On the 20th July, 1857, General Lane, under the authority of the Topeka convention, undertook, as Governor Walker informs us, "to organize the whole so-called free State party into volunteers, and to take the names of all who refuse enrolment. The professed object is to protect the polls, at the election in August, of the new insurgent Topeka State legislature."

"The object of taking the names of all who refuse enrolment is to terrify the free State conservatives into submission. This is proved by recent atrocities committed on such men by Topekaites. The speedy location of large bodies of regular troops here, with two batteries, is necessary. The Lawrence insurgents await the development of this new revolutionary military organization," &c., &c.

In the governor's despatch of July 27th, he says that "General Lane and his staff everywhere deny the authority of the territorial laws, and counsel a total disregard of these enactments."

Without making further quotations of a similar character from other despatches of Governor Walker, it appears by a reference to Mr. Stanton's communication to General Cass, of the 9th of December last, that the "important step of calling the legislature together was taken after I [he] had become satisfied that the election ordered by the convention on the 21st instant could not be conducted without collision and bloodshed." So intense was the disloyal feeling among the enemies of the government established by Congress, that an election which afforded them an opportunity, if in the majority, of making Kansas a free State, according to their own professed desire, could not be conducted without collision and bloodshed!

The truth is, that, up till the present moment, the enemies of the existing government still adhere to their Topeka revolutionary constitution and government. The very first paragraph of the message of Governor Robinson, dated on the 7th of December, to the Topeka legislature, now assembled at Lawrence, contains an open defiance of the Constitution and laws of the United States. The governor says: "The convention which framed the constitution at Topeka originated with the people of Kansas Territory. They have adopted and ratified the same twice by a direct vote, and also indirectly through two elections of State officers and members of the State legislature. Yet it has pleased the administration to regard the whole proceeding revolutionary."

This Topeka government, adhered to with such treasonable pertinacity, is a government in direct opposition to the existing government prescribed and recognized by Congress. It is a usurpation of the same character as it would be for a portion of the people of any State of the Union to undertake to establish a separate government, within its limits, for the purpose of redressing any grievance, real or imaginary, of which they might complain, against the legitimate State government. Such a principle, if carried into execution, would destroy all lawful authority and produce universal anarchy.

From this statement of facts, the reason becomes palpable why the enemies of the government authorized by Congress have refused to vote for delegates to the Kansas constitutional convention, and also afterwards on the question of slavery submitted by it to the people. It is because they have ever refused to sanction or recognize any other constitution than that framed at Topeka.

Had the whole Lecompton constitution been submitted to the people, the adherents of this organization would doubtless have voted against it, because, if successful, they would thus have removed an obstacle out of the way of their own revolutionary constitution. They would have done this, not upon a consideration of the merits of the whole or any part of the Lecompton constitution, but simply because they have ever resisted the authority of the government authorized by Congress, from which it emanated.

Such being the unfortunate condition of affairs in the Territory, what was the right, as well as the duty, of the law abiding people? Were they silently and patiently to submit to the Topeka usurpation, or adopt the necessary measures to establish a constitution under the authority of the organic law of Congress?

That this law recognized the right of the people of the Territory, without any enabling act from Congress, to form a State constitution, is too clear for argument. For Congress "to leave the people of the Territory perfectly free," in framing their constitution, "to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States," and then to say that they shall not be permitted to proceed and frame a constitution in their own way, without an express authority from Congress, appears to be almost a contradiction in terms. It would be much more plausible to contend that Congress had no power to pass such an enabling act, than to argue that the people of a Territory might be kept out of the Union for an indefinite period, and until it might please Congress to permit

them to exercise the right of self-government. This would be to adopt not "their own way," but the way which Congress might prescribe.

It is impossible that any people could have proceeded with more regularity in the formation of a constitution than the people of Kansas have done. It was necessary, first, to ascertain whether it was the desire of the people to be relieved from their territorial dependence and establish a State government. For this purpose, the territorial legislature, in 1855, passed a law "for taking the sense of the people of this Territory upon the expediency of calling a convention to form a State constitution" at the general election to be held in October, 1856. The "sense of the people" was accordingly taken, and they decided in favor of a convention. It is true that at this election the enemies of the territorial government did not vote, because they were then engaged at Topeka, without the slightest pretext of lawful authority, in framing a constitution of their own for the purpose of subverting the territorial government.

In pursuance of this decision of the people in favor of a convention, the territorial legislature, on the 27th day of February, 1857, passed an act for the election of delegates on the third Monday of June, 1857, to frame a State constitution. This law is as fair in its provisions as any that ever passed a legislative body for a similar purpose. The right of suffrage at this election is clearly and justly defined. "Every *bona fide* inhabitant of the Territory of Kansas" on the third Monday of June, the day of the election, who was a citizen of the United States above the age of twenty-one, and had resided therein for three months previous to that date, was entitled to vote. In order to avoid all interference from neighboring States or Territories with the freedom and fairness of the election, provision was made for the registry of the qualified voters; and, in pursuance thereof, nine thousand two hundred and fifty-one voters were registered. Governor Walker did his whole duty in urging all the qualified citizens of Kansas to vote at this election. In his inaugural address, on the 27th May last, he informed them that "under our practice the preliminary act of framing a State constitution is uniformly performed through the instrumentality of a convention of delegates chosen by the people themselves. That convention is now about to be elected by you under the call of the territorial legislature, created and still recognized by the authority of Congress, and clothed by it, in the comprehensive language of the organic law, with full power to make such an enactment. The territorial legislature, then, in assembling this convention, were fully sustained by the act of Congress, and the authority of the convention is

distinctly recognized in my instructions from the President of the United States."

The governor also clearly and distinctly warns them what would be the consequences if they should not participate in the election. "The people of Kansas, then, (he says) are invited by the highest authority known to the Constitution, to participate, freely and fairly, in the election of delegates to frame a constitution and State government. The law has performed its entire appropriate function when it extends to the people the right of suffrage, but it cannot compel the performance of that duty. Throughout our whole Union, however, and wherever free government prevails, those who abstain from the exercise of the right of suffrage authorize those who do vote to act for them in that contingency; and the absentees are as much bound, under the law and Constitution, where there is no fraud or violence, by the act of the majority of those who do vote, as if all had participated in the election. Otherwise, as voting must be voluntary, self-government would be impracticable, and monarchy or despotism would remain as the only alternative."

It may also be observed, that at this period any hope, if such had existed, that the Topeka constitution would ever be recognized by Congress, must have been abandoned. Congress had adjourned on the 3d March previous, having recognized the legal existence of the territorial legislature in a variety of forms, which I need not enumerate. Indeed, the delegate elected to the House of Representatives, under a territorial law; had been admitted to his seat, and had just completed his term of service on the day previous to my inauguration.

This was the propitious moment for settling all difficulties in Kansas. This was the time for abandoning the revolutionary Topeka organization, and for the enemies of the existing government to conform to the laws, and to unite with its friends in framing a State constitution. But this they refused to do, and the consequences of their refusal to submit to lawful authority and vote at the election of delegates may yet prove to be of a most deplorable character. Would that the respect for the laws of the land which so eminently distinguished the men of the past generation could be revived! It is a disregard and violation of law which have for years kept the Territory of Kansas in a state of almost open rebellion against its government. It is the same spirit which has produced actual rebellion in Utah. Our only safety consists in obedience and conformity to law. Should a general spirit against its enforcement prevail, this will prove fatal to us as a nation. We acknowledge no master but the law; and

should we cut loose from its restraints, and every one do what seemeth good in his own eyes, our case will indeed be hopeless.

The enemies of the territorial government determined still to resist the authority of Congress. They refused to vote for delegates to the convention, not because, from circumstances which I need not detail, there was an omission to register the comparatively few voters who were inhabitants of certain counties of Kansas in the early spring of 1857, but because they had predetermined, at all hazards, to adhere to their revolutionary organization, and defeat the establishment of any other constitution than that which they had framed at Topeka. The election was, therefore, suffered to pass by default; but of this result the qualified electors who refused to vote can never justly complain.

From this review, it is manifest that the Lecompton convention, according to every principle of constitutional law, was legally constituted and was invested with power to frame a constitution.

The sacred principle of popular sovereignty has been invoked in favor of the enemies of law and order in Kansas. But in what manner is popular sovereignty to be exercised in this country, if not through the instrumentality of established law? In certain small republics of ancient times the people did assemble in primary meetings, passed laws, and directed public affairs. In our country this is manifestly impossible. Popular sovereignty can be exercised here only through the ballot-box; and if the people will refuse to exercise it in this manner, as they have done in Kansas at the election of delegates, it is not for them to complain that their rights have been violated.

The Kansas convention, thus lawfully constituted, proceeded to frame a constitution, and, having completed their work, finally adjourned on the 7th day of November last. They did not think proper to submit the whole of this constitution to a popular vote, but they did submit the question whether Kansas should be a free or a slave State to the people. This was the question which had convulsed the Union and shaken it to its very centre. This was the question which had lighted up the flames of civil war in Kansas, and had produced dangerous sectional parties throughout the confederacy. It was of a character so paramount in respect to the condition of Kansas as to rivet the anxious attention of the people of the whole country upon it, and it alone. No person thought of any other question. For my own part, when I instructed Governor Walker, in general terms, in favor of submitting

the constitution to the people, I had no object in view except the all-absorbing question of slavery. In what manner the people of Kansas might regulate their other concerns was not a subject which attracted any attention. In fact, the general provisions of our recent State constitutions, after an experience of eight years, are so similar and so excellent that it would be difficult to go far wrong at the present day in framing a new constitution.

I then believed, and still believe, that, under the organic act, the Kansas convention were bound to submit this all-important question of slavery to the people. It was never, however, my opinion that, independently of this act, they would have been bound to submit any portion of the constitution to a popular vote, in order to give it validity. Had I entertained such an opinion, this would have been in opposition to many precedents in our history, commencing in the very best age of the republic. It would have been in opposition to the principle which pervades our institutions, and which is every day carried out into practice, that the people have the right to delegate to representatives, chosen by themselves, their sovereign power to frame constitutions, enact laws, and perform many other important acts, without requiring that these should be subjected to their subsequent approbation. It would be a most inconvenient limitation of their own power, imposed by the people upon themselves, to exclude them from exercising their sovereignty in any lawful manner they think proper. It is true that the people of Kansas might, if they had pleased, have required the convention to submit the constitution to a popular vote; but this they have not done. The only remedy, therefore, in this case, is that which exists in all other similar cases. If the delegates who framed the Kansas constitution have in any manner violated the will of their constituents, the people always possess the power to change their constitution or their laws, according to their own pleasure.

The question of slavery was submitted to an election of the people of Kansas on the 21st December last, in obedience to the mandate of the Constitution. Here, again, a fair opportunity was presented to the adherents of the Topeka constitution, if they were the majority, to decide this exciting question "in their own way," and thus restore peace to the distracted Territory; but they again refused to exercise their right of popular sovereignty, and again suffered the election to pass by default.

I heartily rejoice that a wiser and better spirit prevailed among a large majority of these people on the first Monday of January; and

that they did, on that day, vote under the Lecompton constitution for a governor and other State officers, a member of Congress, and for members of the legislature. This election was warmly contested by the parties, and a larger vote was polled than at any previous election in the Territory. We may now reasonably hope that the revolutionary Topeka organization will be speedily and finally abandoned, and this will go far towards the final settlement of the unhappy differences in Kansas. If frauds have been committed at this election, either by one or both parties, the legislature and the people of Kansas, under their constitution, will know how to redress themselves and punish these detestable but too common crimes without any outside interference.

The people of Kansas have, then, "in their own way," and in strict accordance with the organic act, framed a constitution and State government; have submitted the all-important question of slavery to the people, and have elected a governor, a member to represent them in Congress, members of the State legislature, and other State officers. They now ask admission into the Union under this constitution, which is republican in its form. It is for Congress to decide whether they will admit or reject the State which has thus been created. For my own part, I am decidedly in favor of its admission, and thus terminating the Kansas question. This will carry out the great principle of non-intervention recognized and sanctioned by the organic act, which declares in express language in favor of "non-intervention by Congress with slavery in the States or Territories," leaving "the people thereof perfectly free to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States." In this manner, by localizing the question of slavery, and confining it to the people whom it immediately concerned, every patriot anxiously expected that this question would be banished from the halls of Congress, where it has always exerted a baneful influence throughout the whole country.

It is proper that I should briefly refer to the election held under an act of the territorial legislature, on the first Monday of January last, on the Lecompton constitution. This election was held after the Territory had been prepared for admission into the Union as a sovereign State, and when no authority existed in the territorial legislature which could possibly destroy its existence or change its character. The election, which was peaceably conducted under my instructions, involved a strange inconsistency. A large majority of the persons who

voted against the Lecompton constitution were at the very same time and place recognizing its valid existence in the most solemn and authentic manner, by voting under its provisions. I have yet received no official information of the result of this election.

As a question of expediency, after the right has been maintained, it may be wise to reflect upon the benefits to Kansas and to the whole country which would result from its immediate admission into the Union, as well as the disasters which may follow its rejection. Domestic peace will be the happy consequence of its admission, and that fine Territory, which has hitherto been torn by dissensions, will rapidly increase in population and wealth, and speedily realize the blessings and the comforts which follow in the train of agricultural and mechanical industry. The people will then be sovereign, and can regulate their own affairs in their own way. If a majority of them desire to abolish domestic slavery within the State, there is no other possible mode by which this can be effected so speedily as by prompt admission. The will of the majority is supreme and irresistible when expressed in an orderly and lawful manner. They can make and unmake constitutions at pleasure. It would be absurd to say that they can impose fetters upon their own power which they cannot afterwards remove. If they could do this, they might tie their own hands for a hundred as well as for ten years. These are fundamental principles of American freedom, and are recognized, I believe, in some form or other, by every State constitution; and if Congress, in the act of admission, should think proper to recognize them, I can perceive no objection to such a course. This has been done emphatically in the constitution of Kansas. It declares in the bill of rights that "all political power is inherent in the people, and all free governments are founded on their authority and instituted for their benefit, and therefore they have at all times an inalienable and indefeasible right to alter, reform, or abolish their form of government in such manner as they may think proper." The great State of New York is at this moment governed under a constitution framed and established in direct opposition to the mode prescribed by the previous constitution. If, therefore, the provision changing the Kansas constitution, after the year one thousand eight hundred and sixty-four, could by possibility be construed into a prohibition to make such a change previous to that period, this prohibition would be wholly unavailing. The legislature already elected may, at its very first session, submit the question to a vote of the people whether they will or will

not have a convention to amend their constitution and adopt all necessary means for giving effect to the popular will.

It has been solemnly adjudged by the higest judicial tribunal known to our laws, that slavery exists in Kansas by virtue of the Constitution of the United States. Kansas is, therefore, at this moment as much a slave State as Georgia or South Carolina. Without this the equality of the sovereign States composing the Union would be violated, and the use and enjoyment of a Territory acquired by the common treasure of all the States would be closed against the people and the property of nearly half the members of the confederacy. Slavery can therefore never be prohibited in Kansas except by means of a constitutional provision, and in no other manner can this be obtained so promptly, if a majority of the people desire it, as by admitting it into the Union under its present constitution.

On the other hand, should Congress reject the constitution, under the idea of affording the disaffected in Kansas a third opportunity of prohibiting slavery in the State, which they might have done twice before if in the majority, no man can foretell the consequences.

If Congress, for the sake of those men who refused to vote for delegates to the convention when they might have excluded slavery from the constitution, and who afterwards refused to vote on the 21st December last, when they might, as they claim, have stricken slavery from the constitution, should now reject the State because slavery remains in the constitution, it is manifest that the agitation upon this dangerous subject will be renewed in a more alarming form than it has ever yet assumed.

Every patriot in the country had indulged the hope that the Kansas and Nebraska act would put a final end to the slavery agitation, at least in Congress, which had for more than twenty years convulsed the country and endangered the Union. This act involved great and fundamental principles, and if fairly carried into effect will settle the question. Should the agitation be again revived, should the people of the sister States be again estranged from each other with more than their former bitterness, this will arise from a cause, so far as the interests of Kansas are concerned, more trifling and insignificant than has ever stirred the elements of a great people into commotion. To the people of Kansas, the only practical difference between admission or rejection depends simply upon the fact whether they can themselves more speedily change the present constitution if it does not accord with the will of the majority, or frame a second constitution

to be submitted to Congress hereafter. Even if this were a question of mere expediency, and not of right, the small difference of time, one way or the other, is of not the least importance, when contrasted with the evils which must necessarily result to the whole country from a revival of the slavery agitation.

In considering this question, it should never be forgotten that, in proportion to its insignificance, let the decision be what it may, so far as it may affect the few thousand inhabitants of Kansas, who have from the beginning resisted the constitution and the laws, for this very reason the rejection of the constitution will be so much the more keenly felt by the people of fourteen of the States of this Union, where slavery is recognized under the Constitution of the United States.

Again: The speedy admission of Kansas into the Union would restore peace and quiet to the whole country. Already the affairs of this Territory have engrossed an undue proportion of public attention. They have sadly affected the friendly relations of the people of the States with each other, and alarmed the fears of patriots for the safety of the Union. Kansas once admitted into the Union, the excitement becomes localized, and will soon die away for want of outside aliment. Then every difficulty will be settled at the ballot-box.

Besides—and this is no trifling consideration—I shall then be enabled to withdraw the troops of the United States from Kansas, and employ them on branches of service where they are much needed. They have been kept there, on the earnest importunity of Governor Walker, to maintain the existence of the territorial government and secure the execution of the laws. He considered that at least two thousand regular troops, under the command of General Harney, were necessary for this purpose. Acting upon his reliable information, I have been obliged, in some degree, to interfere with the expedition to Utah, in order to keep down rebellion in Kansas. This has involved a very heavy expense to the government. Kansas once admitted, it is believed there will no longer be any occasion there for troops of the United States.

I have thus performed my duty on this important question, under a deep sense of responsibility to God and my country. My public life will terminate within a brief period; and I have no other object of earthly ambition than to leave my country in a peaceful and prosperous condition, and to live in the affections and respect of my countrymen. The dark and ominous clouds which now appear to be impending over the Union, I conscientiously believe may be dissipated with

honor to every portion of it by the admission of Kansas during the present session of Congress; whereas, if she should be rejected, I greatly fear these clouds will become darker and more ominous than any which have ever yet threatened the Constitution and the Union.

JAMES BUCHANAN.

WASHINGTON, *February* 2, 1858.